

MARCH 12, 2008

MICHAEL W. DOBBINS

CLERK, U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

AHMED HUSSAIN MEMON,)
File No. 075 823 321,)
Plaintiff,) CASE NO.
)
v.)
)
MICHAEL MUKASEY, U.S. Attorney General,)
Department of Homeland Security;) JUDGE 08
U.S. CITIZENSHIP & IMMIGRATION SERVICES;)
EMILIO T. GONZALEZ, District Director, Chicago)
District Office,) MAGISTRATE JU
Defendants.) MAGIST

08 C 1470

JUDGE KENDALL
MAGISTRATE JUDGE COX

COMPLAINT FOR MANDAMUS

NOW COMES the Plaintiff, Ahmed Hussain Memon, by and through his attorney, Bonita B. Hwang Cho, Law Offices of Cheng, Cho & Yee, P.C., and complaining of Defendants, states as follows:

JURISDICTION

1. This is a civil action brought pursuant to 5 U.S.C. § 704 and 28 U.S.C. § 1331 and § 1361, to compel the Defendants, Emilio T. Gonzales and the U.S. Citizenship & Immigration Services, under the Department of Homeland Security, to accord Plaintiff the due process of law and constitutionally fair procedures in the application process to which he is entitled pursuant to the Fifth Amendment to the Constitution of the United States.

2. This action is brought to compel Defendants and those acting under them to adjudicate an N-400 Application for Naturalization filed by Plaintiff, Ahmed Hussain Memon, (hereinafter “Memon”), which was filed nearly 3 and a half years ago.

PARTIES

3. Memon is a Pakistani citizen and holds lawful permanent resident status.

4. Defendant Emilio T. Gonzales is the District Director of Citizenship & Immigration Services (“CIS”) for the District of Chicago, and is empowered to adjudicate visa petitions and naturalization applications.

FACTS

5. On September 24, 2004, Memon filed an N-400 Application for Naturalization (Exhibit “A”).

6. Memon has not received an interview for his N-400 Application to date.

7. Memon has contacted his congressman to help with his case and has also made an inquiry on his case to the FBI regarding the status of his name check.

8. It has been over 3 and a half years, and Memon has still not been scheduled for an interview on his N-400 application even though Memon is entirely eligible for naturalization.

CLAIMS

9. Defendants have willfully and unreasonably delayed and refused to schedule Plaintiff’s interview on the N-400 Application for Naturalization without any valid cause. Defendant, Emilio T Gonzales, has the authority to schedule adjudicate said application.

10. “District directors are delegated the authority to grant or deny any application or petition submitted to the Service, except for matters delegated to asylum officers pursuant to part 208 and § 253.1(f) of this chapter, or exclusively delegated to service center directors” 8 C.F.R. § 103.1(g)(2)(ii)(B).

11. Thus, Defendants have jurisdiction and are entirely empowered to schedule and adjudicate Plaintiff’s case, but are unwilling to do so.

12. Plaintiff is entitled to due process of law and constitutionally fair procedures in the application process pursuant to the Fifth Amendment to the Constitution of the United States and inaction on applications is a denial of due process of law and is constitutionally unfair.

13. Defendants owe Plaintiff a duty to adjudicate Plaintiff's N-400 Application for Naturalization in a timely manner, and Defendants have unreasonably failed to perform that duty. Defendants do not have the discretion to refuse to adjudicate any petition.

14. Defendants' refusal to schedule for an interview and adjudicate Plaintiff's case has deprived Memon of the benefits of citizenship in the United States.

15. No administrative remedy is available to the Plaintiff to compel the CIS to do its job and prevent needless delay and inaction from which the Plaintiff is now suffering.

16. Rendering a decision on an N-400 Application for Naturalization is a purely ministerial, non-discretionary act which the CIS District Director is compelled to do in fulfilling the duties of his office.

17. Defendants' actions are without substantial justification. Defendants, by refusing to adjudicate Plaintiff's application, have forced Plaintiff to resort to this Court for relief, and Plaintiff is entitled to attorneys fees pursuant to the Equal Access to Justice Act.

WHEREFORE, the Plaintiff prays that this Court:

1. Compel Defendants and those acting under them to immediately perform their duty to schedule an interview and adjudicate the N-400 Application for Naturalization filed by Plaintiff;

2. Declare that there are no just grounds for the Service to refuse to adjudicate Plaintiff's application;

3. Grant attorneys' fees and costs of court under the Equal Access to Justice Act;

4. Grant such other and further relief as is fit and proper.

Respectfully submitted,
AHMED HUSSAIN MEMON

By: s/ Bonita B. Hwang Cho
One of his attorneys

Bonita B. Hwang Cho
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(312) 853-3088
bcho@lawyersimmigration.com

CERTIFICATE OF SERVICE

I, Bonita B. Hwang Cho, the attorney, hereby certify that on the 12 day of March, 2008, a **Complaint for Mandamus** was served to:

Michael Mukasey, U.S. Attorney General
c/o Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528

and

Emilio Gonzales, Director of U.S. CIS
c/o Office of the General Counsel
U.S. Department of Homeland Security
Washington, D.C. 20528

and

Patrick J. Fitzgerald
U.S. Attorney
Northern District of Illinois
219 South Dearborn, Suite 5000
Chicago, IL 60604

s/Bonita B. Hwang Cho

Attorney for Plaintiff
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Receipt			NOTICE DATE October 01, 2004
CASE TYPE N400 Application For Naturalization			INS A# A 075 823 321
APPLICATION NUMBER LIN*000704926	RECEIVED DATE September 24, 2004	PRIORITY DATE September 24, 2004	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS AHMED HUSSAIN MEMON c/o ALIA KHAN # 02 N 6219 N WASHTENAW CHICAGO IL 60659			
PAYMENT INFORMATION: Single Application Fee: \$390.00 Total Amount Received: \$390.00 Total Balance Due: \$0.00			

The above application has been received by our office and is in process. Our records indicate your personal information is as follows:

Date of Birth: September 11, 1970
Address Where You Live: 6219 N WASHTENAW # 02 N
CHICAGO IL 60659

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.

March 12, 2008 TG
08cv1470
JUDGE KENDALL
MAGISTRATE JUDGE COX

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:
US IMMIGRATION AND NATURALIZATION SERVICE
PO BOX 87400
LINCOLN NE 68501-

LIN\$000659268

INS Customer Service Number:
(800) 375-5283

APPLICANT COPY

